

Wireless Termination Tariffs

**Presentation by
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T-MOBILE/DOBSON CELLULAR/WESTERN WIRELESS INTERCARRIER COMPENSATION REFORM PRINCIPLES

- The wireless termination tariff petition should be resolved in light of the following intercarrier compensation (“IC”) reform principles:
 - IC reform should generate incentives for all carriers to become more efficient, cost effective and competitive.
 - A single, integrated IC scheme for all traffic – interstate, intrastate toll and local – and for all types of carriers, irrespective of technology, including wireless carriers, should be implemented during a reasonable transition period.
 - The IC system should be non-discriminatory, technology–neutral and administratively simple.
 - The IC system should eliminate arbitrage opportunities.
 - IC reform should be based on true universal service considerations, not on “make whole” funds designed to replace existing revenue flows.
 - In order to advance the goals of efficiency, equity and competition, IC reform should focus on benefits to consumers, not on guaranteeing the revenues of incumbent carriers.

T-MOBILE, NEXTEL & WESTERN WIRELESS WIRELESS TERMINATION TARIFF PETITION

- Petitioners request that the FCC uphold the statute and FCC rules and clarify that unilateral and extortionate LEC tariffs for the termination of traffic from wireless carriers are unlawful.
- LEC wireless termination tariffs violate every IC reform principle. They encourage LEC inefficiency, discriminate against wireless carriers, harm consumers and serve only to maintain RLEC revenues.
- Failure to act will lead to service interruptions and impede market entry.
 - As a result of unlawful Missouri Court of Appeals decision upholding validity of LEC wireless termination tariffs, SBC notified T-Mobile of its intent to block wireless calls if T-Mobile refuses to pay one-way termination charges pursuant to tariff.
 - LECs have filed wireless termination tariffs in at least 20 states, and formal state commission proceedings (*e.g.*, petitions, arbitrations, tariff investigations) are ongoing in more than 13 states.
 - Business Telecom, Inc. filed FCC interstate access tariff, effective Nov. 4, 2004, requiring wireless carriers to pay one-way termination charges for intraMTA wireless traffic.

UNILATERAL TARIFFS BYPASS FEDERAL INTERCONNECTION PROCESS

- Wireless termination tariffs bypass federally prescribed interconnection requirements, thwart Congressional intent, are anti-competitive, and adversely affect consumers.
- Congress established detailed process involving negotiation/arbitration, state commission approval, FCC oversight, and federal judicial review. This process is “central” to 1996 Telecom Act and “not to be evaded by state rule-making.” *Verizon North I*, 309 F.3d 935, 941 (6th Cir. 2002).
- Tariffs thwart federal process by (1) removing incentives for rural LECs to negotiate in good faith and (2) permitting multiple state proceedings not subject to federal review.
- Under federal process, both rural LECs and wireless carriers have mutual incentives and obligations to negotiate for interconnection. Tariffs remove rural LEC incentives to negotiate in good faith and grant an unfair competitive advantage to rural LECs in the negotiation process.

FEDERAL LAW PROHIBITS UNILATERAL INTERCONNECTION TARIFFS

- Sec. 332(c)(1)(B) gives FCC, not states, authority over CMRS-LEC interconnection, and Sec. 2(b) precludes state regulation of entry of and rates charged by CMRS carriers. *See Iowa Utilities Bd.*, 120 F.3d 753, 800 n.21(8th Cir. 1997) (upholding FCC's CMRS-LEC interconnection rules).
- Every federal appellate court addressing the issue has preempted tariffs filed in lieu of an interconnection agreement.
 - *Wisconsin Bell v. Bie* preempted state tariffing requirement because it “short-circuits negotiations,” thereby interfering with federally prescribed interconnection procedures. 340 F.3d 441 (7th Cir. 2003).
 - *Verizon North I* preempted state tariffing requirement because it “provides an alternative route around the entire interconnection process.” 309 F.3d 935, 943 (6th Cir. 2002).
 - *Verizon North II* preempted state commission order allowing CLEC “to bypass the federal statutory process” by *voluntarily* filing interconnection tariff requiring ILEC to pay tariffed rates. 367 F.3d 577 (6th Cir. 2004).

FCC PRECEDENT AND POLICY PROHIBIT UNILATERAL WIRELESS TERMINATION TARIFFS

- Prior to 1996 Telecom Act, FCC found that ILEC interconnection obligations under Secs. 201 and 332(c) preclude ILECs from adopting unilateral tariffs before negotiating interconnection agreements with wireless carriers.
- Since 1996, FCC consistently has refused to allow ILECs to impose unilateral tariffs in lieu of interconnection agreements. *Virginia Arbitration Order*, at ¶ 600, rejected ILEC proposal that “would allow for tariffed rates to replace automatically the [interconnection] rates arbitrated.”
- Unilateral ILEC tariffs impose unlawful rates/terms.
 - Tariffs impose termination rates that are not TELRIC-based and thus are inconsistent with pricing standards under Sec. 252(d) of the Act.
 - Tariffs impose transport obligations on wireless carriers in violation of Sec. 51.703(b) of FCC rules.
 - Tariffs provide for one-sided payments only to rural LECs for traffic termination, in violation of Sec. 251(b)(5) of the Act.

RURAL LECs HAVE ALTERNATIVE OPTIONS FOR SEEKING TERMINATION COMPENSATION

- Rural LECs have legally enforceable right to demand good faith negotiations and a remedy if wireless carriers fail to comply.
- Under Sec. 20.11(b)(2) of FCC rules, wireless carriers are under mutual and reciprocal obligation to pay “reasonable compensation” to rural LECs for traffic termination.
- In adopting LEC-wireless interconnection rules, FCC “allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers” and “required these negotiations to be conducted in good faith.” *Second CMRS Report and Order*, 9 FCC Rcd 1411, ¶ 229 (1994).
- Rural LECs that cannot reach agreement with wireless carriers may file complaint under Sec. 208 of the Act.

THE WIRELESS TERMINATION TARIFF ISSUE SHOULD BE RESOLVED WITHOUT FURTHER DELAY

- Every day that the wireless termination tariffs remain in effect increases the threat of service interruptions and the harm to wireless consumers and distorts competition by forcing wireless carriers to subsidize RLECs and impeding entry.
- The petition merely seeks declaratory relief under current rules. The near term resolution of the petition will not prejudice or prejudge the IC reform proceeding.
- Grant of the petition will encourage RLECs to negotiate compensation and other interconnection terms with wireless carriers. The resulting stability will facilitate IC reform.